

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

Cr1.MC.No. 4449 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CC 146/2014 of C.J.M.PALAKKAD DATED
CRIME NO. 1375/2013 OF PALAKKAD TOWN SOUTH POLICE STATION , PALAKKAD

PETITIONER(S)/ACCUSED:

SHIYAS
S/O. HAMSA, KURIAPPILLY HOUSE, MATHILAKAM P.O.
THRISSUR DISTRICT.

BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENT(S)/COMPLAINANT:

1. STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, REPRESENTING THE STATION HOUSE OFFICER
TOWN SOUTH POLICE STATION, PALAKKAD - 678 001.

2. Z.SURENDRAN
DYSP, DCRB, PALAKKAD - 678 001.

R1 BY PUBLIC PROSECUTOR SRI.V.SURESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
16-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 4449 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

A - CERTIFIED COPY OF THE FIR IN CRIME NO. 1375/2013 OF TOWN SOUTH
POLICE STATION, PALAKKAD D T. 03.7.13.

B - CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 1375/2013 DT.
29.8.14.

RESPONDENT(S) ' EXHIBITS

NIL

/TRUE COPY/

PS TO JUDGE

vgs

ALEXANDER THOMAS, J.

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Crl.M.C.No. 4449 of 2015

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Dated this the 16th day of July, 2015

O R D E R

The prayer in this Crl.M.C. is for an order from this Court to quash the impugned Anx.B final report/charge sheet filed in the impugned Crime No.1375/2013 of Town South Police Station, Palakkad, which has led to the pendency of Calendar Case, C.C.No. 146/2014 on the file of the Chief Judicial Magistrate's Court, Palakkad and all further proceedings arising therefrom. The offences alleged in the impugned Anx.B final report/charge sheet are those under Secs.294(b) & 506(i) of the I.P.C. and Sec.66A of the Information Technology Act.

2. Heard Sri.M.Shaju Purushothaman, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. The Apex Court in the celebrated case Shreya Singhal v. Union of India reported in 2015 (5) SCC 1 = AIR 2015 SC 1523 = 2015 (2) KLT 1 (SC), has held that the impugned provisions contained in Sec.66A of the Information Technology Act are ultra

vires and unenforceable and accordingly struck down the said provision. Therefore, the prosecution on the basis of the offence under Sec.66A of the Information Technology Act is no longer tenable.

4. The other offences alleged in this impugned criminal proceedings are those under Secs.294(b) and 506(i) of the I.P.C. From a reading of the contents in column No.12 of the impugned Anx.A FIR and column No.16 of the impugned Anx.B final report/charge sheet it can be seen that the only allegation raised therein to make an attempt to justify the invocation of the offence under Sec. 294(b) of the I.P.C. is that the petitioner has used vulgar and abusive language against the defacto complainant. It has been held by this Court in the case *Latheef v. State of Kerala* reported 2014(2) KLT 987, based on the earlier rulings of this Court as in *P.T Chacko v. Nainan Chacko* reported in 1967 KLT 799 and *Sangeetha Lakshmana v. State of Kerala* reported in 2008 (2) KLT 745 that abusive words or humiliating words or defamatory words will not as such amount to obscenity as envisaged in Secs.292 and 294(b) of the I.P.C. To make the words obscene, as punishable under Section 294(b) IPC, it must satisfy the definition of obscenity

and that being a continuation of the subject dealt with under Sec.292 I.P.C., the definition of obscenity under Sec.292(1) IPC can be applied in a prosecution under Sec.294(b) of the I.P.C., as there is no separate definition for obscenity in Sec.294. That to make it punishable the alleged words must be in a sense lascivious, or it must appeal to the prurient interest, or will deprave and corrupt persons. That the alleged words uttered must be capable of arousing sexually impure thoughts in the minds of its hearers and thus to make the alleged words of obscene it must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons and defiling morals by sex appeal or lustful desires. That merely because the words are abusive, defamatory or humiliating will not make by obscene so as to attract offence under Sec. 294(b) of the I.P.C. The legal position in this regard was laid down by this Court in paragraph 5 of Latheef's case supra, which reads as follows:

'5. Abusive words or humiliating words or defamatory words will not as such amount to obscenity as defined under the law. Of course there is no doubt that the words alleged to have been used by the revision petitioner are in fact abusive and humiliating. But to make it obscene, punishable under Section 294(b) IPC, it must satisfy the definition of obscenity. Section 294 IPC does not define obscenity. Being a continuation of the subject dealt with under Section 292 IPC the definition of obscenity under 292(1) IPC can be applied in a prosecution under Section 294 IPC also. To make punishable, the alleged words must be in a sense lascivious, or it

must appeal to the prurient interest, or will deprave and corrupt persons. In P.T Chacko V. Nainan Chacko reported in (1967 KLT 799) this Court held that, “ the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.” In Sangeetha Lakshmana V. State of Kerala reported in (2008(2) KLT 745) this Court held thus, “in order to satisfy the test of obscenity, the words alleged to have been uttered must be capable of arousing sexually impure thoughts in the minds of its hearers.” Thus it is quite clear that, to make obscene the alleged words must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons, and defiling morals by sex appeal or lustful desires. I find that the words alleged to have been used by the revision petitioner in this case are really abusive and humiliating, but those words cannot be said to be obscene. As already stated, every abusive word or every humiliating word cannot, by itself, be said to be obscene as defined under the Indian Penal Code. I find that the conviction against the revision petitioner under Section 294 (b)IPC in this case, on the basis of the above words alleged to have been used by him, is liable to be set aside, and the revision petitioner is entitled to be acquitted.'

5. In the instant case also, from a mere perusal of the materials available on record, it can be seen that the only allegation raised by the defacto complainant is that the petitioner accused has used humiliating, abusive, vulgar or defamatory words and not even of remote whisper is anywhere therein that the words used contained lascivious elements or prurient elements or using sexual thoughts or feelings or that the words must have the effect of depraving persons, and defiling morals by sex appeal or lustful desires, etc. Therefore, offence under Sec.294(b) is not made out in the facts of this case.

6. The only other surviving offence is the one under

Sec.506(i) of the I.P.C., which is indisputably a non-cognizable offence and there is no case for the prosecution that prior permission of the Magistrate was secured as envisaged in Sec.155 (2) of the Cr.P.C. The impugned Anx.A FIR does not have any other offence.

7. In the light of these aspects, it is held that the impugned proceedings for the aforestated offences are not sustainable or tenable. Accordingly, the impugned criminal proceedings at Anx.B final report/charge sheet filed in Anx.A Crime No.1375/2013 of Town South Police Station, Palakkad, which has led to the institution of the Calendar Case, C.C.No.146/2014 on the file of the Chief Judicial Magistrate's Court, Palakkad pending against the petitioner herein and all further proceedings arising therefrom pending against the petitioner herein stand quashed.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

Cr1.M.C.4449/15

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